

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ADAM FILBY,

Plaintiff,

v.

EQUILON ENTERPRISES LLC d/b/a SHELL  
OIL PRODUCTS US, *et al.*,

Defendants.

CASE NO. C18-1796-JCC

ORDER

This matter comes before the Court on the parties' joint motion for a stipulated protective order (Dkt. No. 21). The Court ENTERS the following:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following stipulated protective order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1     2.     “CONFIDENTIAL” MATERIAL

2             “Confidential” material may include the following documents and tangible things  
3 produced or otherwise exchanged: all documents concerning corrective actions, letters of  
4 commendation or reprimand, salary or pay information, performance evaluations, sick and  
5 vacation leave hours, personal financial records, medical records, other job positions Plaintiff  
6 applied for, information about applicants/candidates for those positions, Plaintiff’s and other  
7 employee personnel files, and Defendant’s financial information, customer and client  
8 information, Defendant’s internal policies and procedures, Defendant’s Puget Sound Refinery  
9 (“PSR”) business, strategy, organizational charts and reporting structures, Defendant’s health  
10 and safety information and records at PSR, and all other private, proprietary information in a  
11 party’s possession that is not generally available to employees or the public. The parties agree  
12 that a “Confidential” designation of documents that may fall into any of the above-described  
13 categories does not waive a party’s right to challenge that designation. The parties also agree that  
14 the definition of “Confidential” material contained in this paragraph does not limit a party’s right  
15 to designate other documents or materials that are not specifically enumerated herein.

16     3.     SCOPE

17             The protections conferred by this agreement cover not only confidential material (as  
18 defined above), but also: (1) any information copied or extracted from confidential material; (2)  
19 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
20 conversations, or presentations by parties or their counsel that might reveal confidential material.  
21 To the extent that testimony is deemed confidential, that designation must be affirmatively  
22 asserted, consistent with paragraph 5.2(b) below.

23             However, the protections conferred by this agreement do not cover information that is in  
24 the public domain or becomes part of the public domain through trial or otherwise.

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1     4.     ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2             4.1     Basic Principles. A receiving party may use confidential material that is disclosed  
3 or produced by another party or by a non-party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
5 the categories of persons and under the conditions described in this agreement. Confidential  
6 material must be stored and maintained by a receiving party at a location and in a secure manner  
7 that ensures that access is limited to the persons authorized under this agreement.

8             4.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
9 ordered by the Court or permitted in writing by the designating party, a receiving party may  
10 disclose any confidential material only to:

11                 (a)     the receiving party’s counsel of record in this action, as well as employees  
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13                 (b)     the officers, directors, and employees (including in-house counsel) of the  
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
15 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
16 designated;

17                 (c)     experts and consultants to whom disclosure is reasonably necessary for  
18 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
19 A);

20                 (d)     the Court, court personnel, and court reporters and their staff;

21                 (e)     copy or imaging services retained by counsel to assist in the duplication of  
22 confidential material, provided that counsel for the party retaining the copy or imaging service  
23 instructs the service not to disclose any confidential material to third parties and to immediately  
24 return all originals and copies of any confidential material;

25                 (f)     during their depositions, witnesses in the action to whom disclosure is  
26 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of  
2 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
3 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
4 under this agreement;

5 (g) the author or recipient of a document containing the information or a  
6 custodian or other person who otherwise possessed or knew the information.

7 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
8 referencing such material in court filings, the filing party shall confer with the designating party  
9 to determine whether the designating party will remove the confidential designation, whether the  
10 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
11 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
12 standards that will be applied when a party seeks permission from the court to file material under  
13 seal.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
16 or non-party that designates information or items for protection under this agreement must take  
17 care to limit any such designation to specific material that qualifies under the appropriate  
18 standards. The designating party must designate for protection only those parts of material,  
19 documents, items, or oral or written communications that qualify, so that other portions of the  
20 material, documents, items, or communications for which protection is not warranted are not  
21 swept unjustifiably within the ambit of this agreement. By designating materials as Confidential,  
22 the designating party and its counsel represent that they have a good faith belief that the  
23 materials so designated contain sensitive, non-public, confidential information.

24 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
25 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
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unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

If it comes to a designating party's attention that information or items that it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement (*see, e.g.*, second paragraph of section 5.3 below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated when the material is disclosed or produced.

(a) Information in documentary form: (*e.g.*, paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within 30 days of receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pretrial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

1           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the designating party's  
3 right to secure protection under this agreement for such material. Upon timely correction of a  
4 designation, the receiving party must make reasonable efforts to ensure that the material is  
5 treated in accordance with the provisions of this agreement.

6     6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13          6.2     Meet and Confer. The parties must make every attempt to promptly resolve any  
14 dispute regarding confidential designations without court involvement. Any motion regarding  
15 confidential designations or for a protective order must include a certification, in the motion or in  
16 a declaration or affidavit, that the movant has engaged in a good faith meet-and-confer  
17 conference with other affected parties in an effort to resolve the dispute without court action. The  
18 certification must list the date, manner, and participants to the conference. A good faith effort to  
19 confer requires a face-to-face meeting or a telephone conference. The parties agree to meet and  
20 confer within five business days of a party's challenge to a confidentiality designation.

21          6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
22 intervention, the designating party may file and serve a motion to retain confidentiality under  
23 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). Failure to bring  
24 a motion under Local Civil Rule 7 within five business days following the meet-and-confer  
25 regarding the confidential material constitutes a waiver of the confidential designation. This  
26 agreement shall not limit the rights of the requesting party with regard to bringing a motion to

1 seal, in the alternative. The burden of persuasion in any such motion shall be on the designating  
2 party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose  
3 unnecessary expenses and burdens on other parties) may expose the challenging party to  
4 sanctions. All parties shall continue to maintain the material in question as confidential until the  
5 Court rules on the challenge.

6 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
7 LITIGATION

8 If a party is served with a subpoena or a court order issued in other litigation that compels  
9 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
10 party must:

11 (a) promptly notify the designating party in writing and include a copy of the  
12 subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena or order to  
14 issue in the other litigation that some or all of the material covered by the subpoena or order is  
15 subject to this agreement. Such notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be pursued  
17 by the designating party whose confidential material may be affected.

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
20 material to any person or in any circumstance not authorized under this agreement, the receiving  
21 party must immediately (a) notify in writing the designating party of the unauthorized  
22 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
23 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
24 this agreement, and (d) request that such person or persons execute the “Acknowledgment and  
25 Agreement to Be Bound” (Exhibit A).  
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1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

3 When a producing party gives notice to receiving parties that certain inadvertently  
4 produced material is subject to a claim of privilege or other protection, the obligations of the  
5 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
6 provision is not intended to modify whatever procedure may be established in an e-discovery  
7 order or agreement that provides for production without prior privilege review. The parties agree  
8 to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth herein.

9 10. NON-TERMINATION AND RETURN OF DOCUMENTS

10 Within 60 days after the termination of this action, including all appeals, each receiving  
11 party agrees to destroy all confidential material to the producing party, including all copies,  
12 extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods  
13 of destruction.

14 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
15 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,  
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
17 work product, even if such materials contain confidential material.

18 The confidentiality obligations imposed by this agreement shall remain in effect until a  
19 designating party agrees otherwise in writing or a court orders otherwise.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED this 17th day of June, 2019	DATED this 17th day of June, 2019
<u>s/ <i>Michele Haydel Gehrke</i></u> Michele Haydel Gehrke (SBN 215647) Email: mgehrke@reedsmith.com Garrett C. Parks (SBN 297971) Email: gparks@reedsmith.com REED SMITH LLP 101 Second Street, Suite 1800 San Francisco, CA 94105-3659 Telephone: +1 415 543 8700 Facsimile: +1 415 391 8269  Attorneys for Defendant Equilon Enterprises LLC d/b/a Shell Oil Products US	<u>s/ <i>Tom Mumford</i></u> Tom Mumford, WSBA 28652 Buri Funston Mumford & Furlong PLLC 1601 F Street Bellingham, WA 98225 Telephone: +1 360 752 1000 Facsimile: +1 360 752 1502  Attorney for Plaintiff Adam Filby

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 It is further ORDERED that pursuant to Federal Rule of Evidence 502(d), the production  
3 of any documents in this proceeding shall not, for the purposes of this proceeding or any other  
4 proceeding in any other court, constitute a waiver by the producing party of any privilege  
5 applicable to those documents, including the attorney-client privilege, attorney work-product  
6 protection, or any other privilege or protection recognized by law.

7 DATED this 20th day of June 2019.

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11 John C. Coughenour  
12 UNITED STATES DISTRICT JUDGE  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on  
7 \_\_\_\_\_ in the case of *Adam Filby v. Equilon Enterprises LLC d/b/a Shell Oil Products,*  
8 *US*, Case No. C18-1796-JCC (W.D. Wash. 2018). I agree to comply with and to be bound by all  
9 the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
10 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
11 promise that I will not disclose in any manner any information or item that is subject to this  
12 Stipulated Protective Order to any person or entity except in strict compliance with the provisions  
13 of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
16 Order, even if such enforcement proceedings occur after termination of this action.

17 Date: \_\_\_\_\_

18 City and State where sworn and signed: \_\_\_\_\_

19 Printed name: \_\_\_\_\_

20 Signature: \_\_\_\_\_